

Who's in Charge?

Qualification of the Personal Representative, Priority, and Bonding

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Primary Statutes: N.C.G.S. Chapter 28A, Articles 4-12

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What We'll Cover Today

- 1 Who Is the PR? — Definitions & clerk's jurisdiction
- 2 Before Appointment — Intake, evidence of death, alternatives to full admin
- 3 Who Can Qualify — Eligibility & disqualification under G.S. 28A-4-2
- 4 Priority — Testate vs. intestate priority ladders
- 5 Renunciation & Notice — Express, implied, and the 30/90-day rules
- 6 The Application & Qualification Process — Forms, oath, fees, evidence of death
- 7 Bonding — Calculations, waivers, forms of security, modification
- 8 Collectors & the Public Administrator — Articles 11 & 12
- 9 Revocation, Resignation & Ancillary Administration — Brief overview

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SECTION 1

Who Is the Personal Representative?

G.S. 28A-1-1(5); 28A-13-2

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The Personal Representative — Defined

G.S. 28A-1-1(5); 28A-13-2; 28A-2-1

- A PR is a fiduciary who settles a decedent's estate by taking control of assets, paying debts, and distributing the decedent's property.
- The PR must settle the estate as expeditiously and with as little sacrifice of value as is reasonable (G.S. 28A-13-2).
- The term 'personal representative' includes both an executor (testate) and an administrator (intestate). G.S. 28A-1-1(5).
- **The clerk of superior court has original, exclusive jurisdiction to appoint a PR. G.S. 28A-2-1; 28A-2-4(a)(2).**

EXECUTOR (TESTATE)

Person named by the testator in the will to carry out its provisions.

ADMINISTRATOR (INTESTATE)

Person appointed by the court to manage the assets and liabilities of an intestate decedent.

When the clerk appoints a PR, the clerk issues letters. The letters represent the PR's authority to receive and administer the estate.

PRACTICAL TIP: A PR is appointed in a 'formal' or 'full' administration. Not every estate needs one. Alternatives to formal administration are covered in Ch. 28A, Art. 25 and in the SOG manual, Chapter 20.

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Who Is NOT a Personal Representative?

G.S. 28A-1-1(5); 28A-25-1

The following serve in estate-related capacities but are not PRs:

Collector by Affidavit	Administers small estates under G.S. 28A-25-1 (intestate) or 28A-25-1.1 (testate). NOT a PR.
Collector (Art. 11)	Temporary caretaker appointed by the clerk. IS a fiduciary but NOT a PR. Covered later.
Testamentary Trustee	Trustee appointed by or acting under a will. Governed by trust law, not Ch. 28A.
Receiver (Missing Person)	Appointed under G.S. Chapter 28C for missing persons.
Receiver (Military Absentee)	Appointed under G.S. Chapter 28B for absentees in military service.
Surviving Partner	Settling partnership affairs under G.S. Chapter 59, Article 3.

NOTE: Do not confuse a 'collector' (Art. 11) with a 'collector by affidavit' (Art. 25). They are different roles with different authority.

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SECTION 2

Before Anyone Is Appointed

What the clerk's office faces at intake

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Someone Has Died — Now What?

- A family member walks up to the counter: 'My mother just died and I need to take care of her estate.'
- The clerk's first job: gather information to determine what kind of proceeding, if any, is needed.
- Not every death requires a full estate administration.

Key Intake Questions

- Did the decedent have a will?
- What kind of property did they own?
- Were there jointly held or beneficiary-designated assets?
- What is the approximate value of the estate?

- Are there debts or creditors?
- Are there minor children or dependents?
- Is real property titled solely in the decedent's name?
- Who are the potential heirs or devisees?

PRACTICAL TIP: If everything passes by beneficiary designation or survivorship, you may be done before you start. But if real property is titled solely in the decedent's name, formal administration is almost always needed.

The type of administration depends on the value and type of assets. See Clerk's Manual Ch. 20 for alternatives to formal admin.

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Evidence of the Fact and Date of Death

G.S. 28A-6-1(c)

For the clerk to have jurisdiction to appoint a PR, there must be evidence of death. A grant of administration for a living person is void. *Springer v. Shavender*, 118 N.C. 33 (1896).

Acceptable Evidence of Death

- 1 Certified or authenticated copy of a death certificate from the place where death occurred. G.S. 28A-6-1(c)(1).
- 2 Certified or authenticated copy of a governmental record (domestic or foreign) evidencing date of death. G.S. 28A-6-1(c)(2).
- 3 Certificate or authenticated copy of medical records, including a record of death. G.S. 28A-6-1(c)(3).
- 4 Any other evidence the clerk deems sufficient. G.S. 28A-6-1(c)(4).

PRACTICAL TIP: 'Any other evidence' may include the decedent's obituary, a news article, information from the funeral home, or sworn statements in the application. If the death certificate is unavailable at filing, get a copy before approving the final account.

Social Security number: The applicant may not provide more than the last four digits on the application or any filing. G.S. 132-1.10(g)(1).

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Does This Estate Even Need a PR?

Some estates pass without formal administration:

Jointly Held Property & TBE: Passes by right of survivorship. No probate needed for that asset.

Beneficiary-Designated: Life insurance, IRAs, POD/TOD accounts pass directly. Not probate assets. However, POD/TOD assets are subject to creditor claims. Beneficiary-designated life insurance & IRAs are not.

Small Estate / Affidavit: G.S. 28A-25-1 (intestate) or 28A-25-1.1 (testate). Collection by affidavit, no PR.

Year's Allowance Assets: Assets assigned to a surviving spouse or child prior to such assets coming into the hands of a PR do not require formal administration.

NOTE: A 'collector by affidavit' under G.S. 28A-25 is NOT a PR. Do not confuse this with a 'collector' under Article 11.

PRACTICAL TIP: If there are probate assets, especially real property titled solely in the decedent's name, formal administration is almost always needed.

SECTION 3

Who Can Qualify?

Eligibility & Disqualification — G.S. 28A-4-2

The Testator's Right to Name an Executor

In re Estate of Moore, 292 N.C. 58 (1977)

- A testator has the right to name the person who will administer their estate after death, provided the designee is not disqualified by law.
- “A testator's selection of his executor is not to be set aside lightly.” *In re Estate of Moore*, 292 N.C. 58, 65 (1977).
- However, the statutory grounds for disqualification cannot be overwritten by the will of the testator.
- The clerk makes an initial determination of qualification based on the application. If information is incomplete or suggests disqualification, the clerk may hold a hearing. G.S. 28A-2-4(a)(2); 28A-2-6.

PRACTICAL TIP: Even a named executor can be disqualified. The clerk's duty is to apply the statutory criteria regardless of the testator's expressed wishes.

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Persons NOT Qualified to Serve (1 of 2)

G.S. 28A-4-2

Any person is eligible to serve as PR unless disqualified. The following are NOT qualified:

(1) Minor (under 18)

Cannot qualify. G.S. 28A-4-2(1).

(2) Adjudicated incompetent

Person adjudged incompetent in a formal proceeding who remains under that disability. G.S. 28A-4-2(2).

(3) Convicted felon

Convicted under laws of U.S., any state/territory, or D.C. whose citizenship has not been restored. G.S. 28A-4-2(3). Rights generally restored automatically upon completion of sentence in NC.

(4) Non-resident without process agent

A non-resident who has not appointed a resident agent for service of process and filed the appointment with the court. Also applies to a resident who becomes a non-resident post-appointment. G.S. 28A-4-2(4).

(5) Unauthorized corporation

A corporation not authorized to act as PR in NC. Trust institutions licensed under G.S. 53-159 may serve. Foreign corporations must comply with G.S. 55-15-05(a) and appoint process agent. G.S. 28A-4-2(5).

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Persons NOT Qualified to Serve (2 of 2)

G.S. 28A-4-2 (cont.)

(7) Slayer / person who caused death

A person (including spouse or parent) who has lost the right to administer under G.S. Chapter 31A, Acts Barring Property Rights. G.S. 28A-4-2(7).

(8) Illiterate

An illiterate person may not serve as PR. G.S. 28A-4-2(8).

(9) Otherwise unsuitable

The clerk may find a person 'otherwise unsuitable' in the clerk's discretion. G.S. 28A-4-2(9). Includes conflicts of interest, even if not yet actual (likelihood is sufficient). In re Estate of Moore; In re Estate of Brinson.

(10) Person who has renounced

A person who has renounced, expressly or by implication, under G.S. 28A-5-1 or 28A-5-2. G.S. 28A-4-2(10).

(11) Property finder agent

A person employed by, acting as agent for, or conducting business with a property finder under G.S. 116B-52(11a) who has an agreement to locate estate property. G.S. 28A-4-2(11) (eff. Sept. 16, 2021).

PRACTICAL TIP: Any interested person may file a petition alleging disqualification under G.S. 28A-4-1(c). The petition initiates an estate proceeding under Article 2.

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The 'Otherwise Unsuitable' Catch-All

G.S. 28A-4-2(9); In re Estate of Moore; In re Estate of Brinson

This is the clerk's most flexible tool for protecting the estate:

- A person may be 'otherwise unsuitable' when their personal interests are so antagonistic to the estate and beneficiaries that the same person cannot fairly represent both.
- Especially applicable when the conflict was unknown to or unforeseen by the testator (Moore).
- Actual conflict not required; likelihood of a conflict is sufficient. In re Estate of Moore, 25 N.C. App. 36, 40 (1975).

Case Examples

MOORE (1975)

Named executor was accountant for both the decedent and the purchaser of decedent's company. Would have had to decide whether to sue to rescind the sale. Court: conflict of interest = unsuitable.

BRINSON (2003)

Applicant and his sister (only heirs) had strained relationship and history of non-cooperation in family estates. Clerk: cannot represent best interests of the estate. Affirmed on appeal.

PRACTICAL TIP: Document the basis for any 'otherwise unsuitable' finding. Include findings of fact and conclusions of law. The order is appealable to superior court.

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Priority — Who's First in Line?

G.S. 28A-4-1 — Testate & Intestate Priority

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Priority — Testate Estates (Letters Testamentary)

G.S. 28A-4-1(a)

If the decedent died with a valid will, letters testamentary are granted in this order:

- 1 Executor(s) named or designated in the will
- 2 Substitute or successor executor, if named in the will
- 3 Administrator CTA — if no named person qualifies, clerk appoints per nominee of will's designation or per G.S. 28A-4-1(b) order
- 4 Administrator DBN CTA — appointed when the prior executor's or CTA's appointment terminates (death, resignation, revocation) before administration is complete

Key Terms

- CTA = cum testamento annexo ('with the will annexed'). Appointed when no named executor qualifies.
- DBN = de bonis non ('of the goods not already administered'). Appointed after a prior PR's appointment is terminated. The office must be vacant first; appointment when no vacancy exists is void. In re Overman's Estate, 14 N.C. App. 712, 715 (1972).

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Priority — Intestate Estates (Letters of Administration)

G.S. 28A-4-1(b)

Letters of administration granted in this order, unless the clerk determines the best interests of the estate require otherwise:

- 1 Surviving spouse of the decedent
- 2 Any devisee of the testator
- 3 Any heir of the decedent
- 3a Any next of kin (closest degree of kinship under G.S. 104A-1 has priority)
- 4 Any pre-death creditor
- 5 Any person of good character residing in the county
- 6 Any other person of good character not disqualified (likely includes the PA)

NOTE: 'Next of kin' is NOT synonymous with 'heir.' In re Estate of Bryant, 116 N.C. App. 329 (1994): next of kin includes all blood relatives regardless of intestacy eligibility. A mother who was not an heir still had priority over the father of decedent's child.

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Equally Entitled Applicants & the Clerk's Discretion

G.S. 28A-4-1(b)

- **When applicants with the same priority are equally entitled to serve, the clerk must grant letters to the applicant who is most likely to administer the estate advantageously.**
- The clerk may grant letters to two or more applicants (co-PRs) who are most likely to administer the estate advantageously.
- **The clerk has an overarching 'best interests of the estate' override — the clerk may deviate from priority order when the best interests of the estate require otherwise. G.S. 28A-4-1(b).**

Worked Example

John dies intestate. Surviving spouse Mary, three adult children (Alice, Bob, Carol), and creditor XYZ Bank all want to serve.

1. Mary has highest priority (surviving spouse). Clerk offers letters to Mary.
2. Mary renounces. She may nominate another qualified person who takes her priority.
3. Alice, Bob, Carol are at equal priority (heirs). Bob and Carol nominate Alice. Clerk issues letters to Alice.
4. XYZ Bank (creditor) has lowest priority. No claim to serve if Alice qualifies.

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Renunciation & Notice

G.S. 28A-5-1, 28A-5-2, 28A-6-2 — The Gatekeeper Steps

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Express Renunciation

G.S. 28A-5-1(a) (testate); G.S. 28A-5-2(a) (intestate)

- Any person with priority may renounce by filing a signed, acknowledged or witnessed writing with the clerk.
- **Form: AOC-E-200, Renunciation of Right to Qualify for Letters.**
- **A renouncing person may nominate another qualified person to serve. The nominee takes the renouncing person's priority. G.S. 28A-5-2(c).**
- A renouncing executor in a testate estate may nominate only if the will expressly grants authority to do so. G.S. 28A-4-1(a).
- The nominee must still be qualified to serve. The clerk is not bound to appoint the nominee. *Royals v. Baggett*, 257 N.C. 681 (1962).

Withdrawal of Renunciation

- A sole or surviving executor who has renounced may retract that renunciation at any time before administration is granted to another person. *Davis v. Inscoe*, 84 N.C. 396, 401-02 (1881).

PRACTICAL TIP: Get renunciations in writing from ALL higher-priority persons before issuing letters to someone further down the list. Use AOC-E-200.

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Implied Renunciation — The 30-Day and 90-Day Rules

G.S. 28A-5-1(b)-(c); G.S. 28A-5-2(b)

Testate — Named Executor Fails to Qualify (30 Days After Probate)

- If the named executor fails to qualify or renounce within 30 days after the will is admitted to probate, implied renunciation may be initiated by (a) clerk's notice or (b) interested person's petition.
- The executor has 20 days from service to qualify, renounce, or request an extension. If no response, clerk enters order finding renunciation.

Intestate — Person Entitled Fails to Apply (30 Days After Death)

- Same notice/petition mechanism as testate. G.S. 28A-5-2(b)(1).
- 20-day response period from service.

90-Day Rule (Intestate Only)

- If no person entitled to administer applies within 90 days after death, the clerk may declare all prior rights renounced and issue letters to some suitable person. G.S. 28A-5-2(b)(2). *Hill v. Alsbaugh*, 72 N.C. 402 (1875).

NOTE: The 20-day response period in the renunciation statutes now matches the 20-day answer period in the estate proceeding summons (AOC-E-102) under G.S. 28A-2-6(a). Prior to 2025, the statute provided for a 15-day response period. SL 2025-54.

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Notice Before Issuing Letters

G.S. 28A-6-2

General Rule: The clerk may issue letters without notice to others.

Two Exceptions:

EXCEPTION 1 — EQUAL/HIGHER PRIORITY

When the applicant is NOT entitled to priority and there are others with equal or higher preference who have NOT renounced, those persons must receive 20 days' prior written notice. G.S. 28A-6-2(1). Notice NOT required for anyone who has renounced.

EXCEPTION 2 — CLERK REQUIRES IT

The clerk may, in any case, require prior written notice to interested persons designated by the clerk in the clerk's discretion. G.S. 28A-6-2(2). There is no AOC form for this notice.

Case Law

- Issuing letters six days after death without notice or renunciations = sufficient grounds to set aside. *Royals v. Baggett*, 257 N.C. 681 (1962).
- Issuing letters to nominee of renouncing executor without notice to higher-priority devisee = error. In re *Estate of Cole*, 80 N.C. App. 720 (1986).

PRACTICAL TIP: The appointment of a person without proper renunciations and notice is NOT void, but it IS voidable. The prejudiced party may seek revocation. *Garrison v. Cox*, 95 N.C. 353 (1886).

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The Application & Qualification Process

Articles 5, 6, 7 — Forms, Oath, Fees, and Issuance of Letters

Application for Letters — Required Contents

G.S. 28A-6-1(a)

The application must be an affidavit, sworn before an authorized officer, signed by the applicant or attorney, and must allege:

- (1) Name of the decedent (best practice: full name + any other known names)
- (2) Domicile and date/place of death, to the extent known
- (3) Legal residence and mailing address of the applicant
- (4) Names, ages, addresses of heirs/devisees and their guardians (if any); 'minor' or '18+' sufficient for age
- (5) That the applicant is not disqualified, is entitled to apply, or has applied after renunciations/notice
- (6) Nature, probable value, and location of the decedent's property (the 'preliminary inventory' on side 2 of the form)

Forms: [AOC-E-201 \(testate — Application for Probate and Letters\)](#) | [AOC-E-202 \(intestate — Application for Letters of Administration\)](#)

PRACTICAL TIP: The preliminary inventory is often incomplete at filing. Bond may need adjustment when a more accurate inventory is filed later.

How a PR Qualifies — Step by Step

G.S. 28A-6-1, 28A-7-1, 28A-8-1

1	Application Filed	Applicant files AOC-E-201 (testate) or AOC-E-202 (intestate). For testate, will must be probated first (or concurrently).
2	Evidence of Death	Clerk confirms evidence of death (death certificate or other sufficient evidence). G.S. 28A-6-1(c).
3	Qualification Check	Clerk determines eligibility under G.S. 28A-4-2. Confirms priority and renunciations/notice.
4	Oath	PR takes oath to faithfully discharge duties. G.S. 28A-7-1; G.S. 11-11. Form: AOC-E-400.
5	Bond (if required)	Bond posted before letters issue. Amount set by clerk based on personal property value.
6	Letters Issued	Clerk enters order (AOC-E-402) and issues letters (AOC-E-403). Letters are issued electronically through the portal.

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Qualification Fee & Issuance of Letters

G.S. 7A-307; 28A-6-1(b); 28A-6-4; 28A-6-5

Qualification Fee

- One fee per estate, regardless of successor PRs.
- Prior common practice was to collect at inventory. The fee is now uniformly collected at the time of qualification.
- The clerk is NOT authorized to waive the qualification fee.
- If will has previously been probated and \$30 fee paid, full qualification fee of \$120 is still due upon qualification of PR.

Contesting & Validity of Letters

- Prior to issuance, any interested person may file a written petition contesting issuance. G.S. 28A-6-4. Triggers estate proceeding.
- Once issued, letters are not subject to collateral attack. G.S. 28A-6-5. They are binding until revoked. In re Estate of Severt, 194 N.C. App. 508 (2008).

Non-Resident Process Agent: Before letters issue to a non-resident, they must appoint a resident agent (AOC-E-500). If co-PRs, a resident co-PR may serve as process agent for the non-resident co-PR.

PRACTICAL TIP: If the clerk denies letters, enter findings of fact and conclusions of law. The order is appealable to superior court for on-the-record review. G.S. 1-301.3(d).

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Letters — Practical Details for the Clerk's Office

G.S. 28A-6-1; AOC-E-402, AOC-E-403

- Clerk enters Order Authorizing Issuance of Letters (AOC-E-402)
- Clerk then issues Letters (AOC-E-403). Note the type: add 'Testamentary' or 'of Administration' to the caption.
- Issue letters in the name as it appears on the application.
- Letters are now digital. Previously, clerk would retain an original letter (unsigned, unsealed) and give the PR five copies with original signature, each sealed. That is no longer the case.
- Letters are often e-mailed to PR or attorney representing PR as a courtesy. Portal currently does not provide notification to applicant when PR has been appointed and Letters issued.
- Letters can also be downloaded from the portal with elevated access (not available to the general public).

Wrongful Death Letters

- A PR may qualify without bond solely to bring (or defend) a wrongful death action. G.S. 28A-8-1(b)(4).
- Good practice: add to letters: 'These letters are issued for the sole purpose of bringing an action for wrongful death and are not to be used to collect assets. The fiduciary shall post a bond prior to receiving any property into the estate unless otherwise not required.'

PRACTICAL TIP: Third parties require recently dated letters. Banks and title companies often demand letters issued within 60-90 days.

SECTION 7

Bonding

Article 8 — Amounts, Waivers, Forms of Security, Modification

Bond — Overview and Clerk Liability

G.S. 28A-8-1(a); 28A-8-2

- Every PR must give bond BEFORE letters issue, conditioned on faithful execution of duties and obedience to court orders. G.S. 28A-8-1(a).
- Bond is payable to the State of North Carolina for use of persons interested in the estate. G.S. 28A-8-2(1), (2).
- **Many clerk liability issues arise from bond. Claims arise when the clerk fails to require a bond or sets an insufficient amount.**
- Real property value is NOT included in determining the bond amount. G.S. 28A-8-2(3).

Bond Amount Formulas

CORPORATE SURETY

Not less than 125% of personal property value.
Exception: If personal property exceeds \$100,000, clerk may accept 110%.
G.S. 28A-8-2(3)a.

PERSONAL SURETIES / MORTGAGE / SECURITIES

Not less than 200% (double) the value of personal property.
Value ascertained by clerk on oath.
G.S. 28A-8-2(3)b.

PRACTICAL TIP: Bond amount is based on the preliminary inventory which is often incomplete. Bond must be reviewed when any inventory or account is filed, and when real property is sold and proceeds enter the estate.

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When Bond Is NOT Required

G.S. 28A-8-1(b)

No bond required for:

(b)(1)	Resident executor	Unless the will expressly requires a bond.
(b)(2)	Non-resident executor	Only when the will expressly excuses bond AND process agent is appointed.
(b)(3)	Non-resident executor with resident co-executor	Unless will requires bond or clerk finds bond necessary.
(b)(4)	PR appointed solely for wrongful death action	Until property is received into the estate (Wrongful death proceeds usually not paid into estate)
(b)(5)	Trust institution	Licensed under G.S. 53-159.
(b)(6)	Resident intestate PR	When ALL heirs are 18+ and file written waivers (AOC-E-404). Non-resident PR cannot use this.
(b)(7)	Sole heir or sole devisee	PR who 'receives all the property of the decedent,' regardless of residency.
(b)(8)	Resident administrator CTA	When ALL devisees are 18+ and file written waivers (AOC-E-404).

PRACTICAL TIP: A will provision expressly REQUIRING bond cannot be waived by the heirs/devisees. Read the will carefully.

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Forms of Bond Security

G.S. 28A-8-2(4)

Corporate Surety

Most common. Must be authorized by Commissioner of Insurance. Premium is estate expense. Form: AOC-E-401, Side 1.

Personal Sureties (2+)

Each must reside in and own real estate in NC. Each surety's assets must individually equal or exceed bond amount. Spouses owning TBE property count as one surety. Must justify before clerk. Form: AOC-E-401, Side 2.

First Mortgage / Deed of Trust

On NC real estate, approved form, first lien, power of sale exercisable by clerk. Filed with register of deeds. Not released until final account approved. No AOC form.

Deposit of Negotiable Securities

Proper fiduciary investments, endorsed, delivered to clerk with security agreement. Fair market value determined by clerk. Form: security agreement.

PRACTICAL TIP: Corporate sureties handle virtually all bonds.

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Reducing Bond — The Receipt & Agreement

G.S. 28A-8-1.1; AOC-E-901

- When estate money has been or will be deposited in a NC bank or insured S&L on the condition that it cannot be withdrawn except on court authorization, the clerk may reduce or eliminate the bond for that amount.
- The applicant or PR files a written receipt from the bank (AOC-E-901, Receipt and Agreement).
- The clerk retains the original; provides a copy to the bank.
- The clerk may then exclude the deposited money from the bond computation or reduce the bond to a reasonable amount.
- 'Money' means principal only. Income earned by the principal may be withdrawn without court authorization.

Example

Estate: house (\$300K), antique jewelry (\$150K), bank account (\$100K). Corporate surety bond without receipt: 110% of \$250K = \$275K. With receipt (bank account restricted): 110% of \$150K = \$165K. With personal sureties: 200% of \$250K = \$500K (or \$300K with receipt).

PRACTICAL TIP: AOC-E-901 language may note that receipt and agreement may not fully eliminate the minimum bond requirement. To release funds later, use AOC-E-907, Authorization to Release Funds.

If no personal property or values unknown at qualification, clerks often require a 'minimum bond' — max coverage at lowest premium from an authorized surety.

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Bond Modification & Surety Petition

G.S. 28A-8-3; 28A-8-4; 28A-8-5

Form: AOC-E-433, Application or Motion and Order for Modification of Bond

INCREASE — CLERK'S MOTION

Clerk may require new bond or additional security if current bond is insufficient, individual surety becomes/is about to become non-resident, or corporate surety has withdrawn. G.S. 28A-8-3(a)(1).

INCREASE — BY PETITION

Any interested person may file verified petition. Clerk conducts hearing. If insufficient, clerk orders new bond within 5-15 days. Failure to comply = summary revocation of letters. G.S. 28A-8-3(a)(2); 28A-8-4.

DECREASE

On PR's application, clerk may reduce bond if clearly justified. May NOT reduce below the G.S. 28A-8-2(3) minimum. G.S. 28A-8-3(c).

SALE OF REAL ESTATE

Bond usually must increase when real property is sold and proceeds enter the estate. Good practice: increase before confirming the sale. G.S. 28A-8-3(b); 1-339.10.

Surety Petition for Removal

A surety in danger of loss may petition to remove the PR, require indemnity, or be discharged from future liability. G.S. 28A-8-5. Previous surety not released from pre-filing breaches unless new surety assumes them.

PRACTICAL TIP: Bond review is ongoing. Check sufficiency at every inventory and account filing. A bonding company may impose its own requirements beyond what the clerk controls (such as requirement that PR be represented by attorney).

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Bond — Example

SCENARIO: Sarah qualifies as executor. Estate: house (\$200K), checking accounts (\$50K). Will is silent on bond (does not waive or require).

Q: Does Sarah need a bond?

A: No. Will is silent. Sarah is a resident executor, but the will does not waive bond. G.S. 28A-8-1(b)(1) waives bond for a resident executor unless the terms of the will require bond. Thus, the statutory default for a resident executor is NO bond unless the will requires it.

Q: What if the will expressly requires bond?

A: Then a bond is required. If personal property is \$50K, corporate surety bond = 125% of \$50K = \$62,500. Personal surety bond = 200% of \$50K = \$100,000. Real property (\$200K) is NOT included.

Q: Can Sarah avoid the bond?

A: If bond is required and all devisees/heirs are 18+, they can file written waivers (AOC-E-404). But a will provision requiring bond cannot be waived.

Q: Can the bond be reduced?

A: Yes. If \$50K is deposited in a restricted account (AOC-E-901), it can be excluded from the bond calculation, potentially eliminating the bond.

NOTE: IMPORTANT: For a resident executor, the default is NO bond unless the will requires it. This is the opposite of administrators.

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Collectors & the Public Administrator

Articles 11 & 12

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Collector — Temporary Fiduciary

G.S. 28A-11-1 et seq.

- Appointed by clerk to take possession/custody/control of personal property when there is a delay in appointing a PR or when the clerk finds it in the best interest of the estate.
- Any person not disqualified under G.S. 28A-4-2 may serve. G.S. 28A-11-1.
- Must take oath (G.S. 28A-7-1) and give bond (same as PR). G.S. 28A-11-2.

When to Appoint a Collector

- Need to quickly protect estate assets before a PR is appointed
- Pending determination on whether to admit a will to probate
- Pending outcome of a caveat proceeding (caveat entered before will admitted)
- Pending a dispute over who has priority or is qualified to serve
- Pending wrongful death action filing within the statute of limitations

Powers cease when PR qualifies or clerk terminates appointment. G.S. 28A-11-4(a). On termination, collector must surrender assets and file verified statement of accounts, assets, debts, liabilities, and relevant facts.

PRACTICAL TIP: Collector is a fiduciary but is NOT a PR. Powers are limited: collect, preserve, publish NTC, maintain and defend actions. Cannot make distributions. Compensated same as PR. Clerk must examine and approve the collector's account on termination.

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The Public Administrator

G.S. 28A-12-1 through 28A-12-8

- Every county must have a PA. May have more than one (e.g., for conflict situations). G.S. 28A-12-1.
- Appointed by the clerk with written approval of the resident superior court judge. 4-year term. G.S. 28A-12-1.
- Must take oath; filed with the clerk. G.S. 28A-12-2.

When the PA Applies for Letters (G.S. 28A-12-4)

- Six months have elapsed from death, decedent owned property, and no letters applied for or issued to anyone.
- Any person without known heirs dies intestate owning property.
- Any person entitled to apply requests in writing that clerk issue letters to the PA (via renunciation + nomination under G.S. 28A-5-2(c)).

NOTE: The PA's duty to apply after 6 months does NOT eliminate the priority of next of kin and others under G.S. 28A-4-1. Their priority is not lost until the PA actually qualifies. In re Bailey's Will, 141 N.C. 193 (1906).

- PA has same rights, powers, duties, liabilities as other PRs. G.S. 28A-12-5(a). Compensated same as other PRs. G.S. 28A-12-8.
- After term expires or PA resigns, must continue administering previously committed estates. PA's bonds remain in effect for those estates. G.S. 28A-12-5(b).

PA bond: Same as other PRs per estate, OR a blanket bond in the clerk's discretion (G.S. 28A-12-3(b)). Amount determined by clerk based on total estates.

SECTION 9 — BRIEF OVERVIEW

Revocation, Resignation & Ancillary Administration

Articles 9, 10 & 26

Revocation & Resignation — Overview

G.S. 28A-9-1 et seq.; 28A-10-1 et seq.

REVOCATION OF LETTERS

- ▶ Clerk may revoke for cause
- ▶ Grounds: failure to perform, waste, failure to file accountings, disqualification
- ▶ Any interested person may petition
- ▶ Notice and hearing generally required
- ▶ Summary revocation for bond failure (5-15 days)

RESIGNATION

- ▶ PR may resign voluntarily
- ▶ Must petition clerk; not effective until approved. Requires hearing (G.S. 28A-10-2(b); G.S. 28A-10-4)
- ▶ Must file final accounting through resignation date
- ▶ Clerk appoints successor PR (G.S. 28A-6-3)
- ▶ PR remains liable for pre-resignation actions

PRACTICAL TIP: A PR who fails to comply with an order to increase or furnish new bond must be summarily removed — G.S. 28A-8-4 requires it. The clerk's order must give the PR between 5 and 15 days to comply.

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Ancillary Administration — Brief Overview

G.S. 28A-26-1 through 28A-26-5

- Letters have no legal force outside the issuing state. A PR appointed in one state cannot administer property in another without that state's authorization.
- An ancillary PR is appointed to administer a non-resident decedent's assets in NC.

Not Always Needed (G.S. 28A-26-2)

After 60 days from death, NC residents may pay debts or deliver property directly to the domiciliary PR upon presentation of certified letters and an affidavit. No ancillary admin needed.

If Ancillary Admin Is Needed

- Domiciliary PR may apply directly (clerk gives preference). G.S. 28A-26-3(a).
- If domiciliary PR does not apply within 90 days of death or 60 days of domiciliary letters, others may apply. Clerk must notify domiciliary PR by registered mail (14-day window). G.S. 28A-26-3(b).
- If no domiciliary PR known, applicant states this. If one later surfaces, clerk must notify by registered mail. G.S. 28A-26-3(b).
- Bond required unless an exception applies. G.S. 28A-26-4.

PRACTICAL TIP: Domicile is a question of fact. Another state's determination of domicile is NOT binding on NC. In re Estate of Severt (2008).

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AOC Forms Quick Reference — Today's Topics

FORM	DESCRIPTION
AOC-E-102	Estate Proceeding Summons
AOC-E-200	Renunciation of Right to Qualify
AOC-E-201	Application for Probate and Letters (testate)
AOC-E-202	Application for Letters of Administration (intestate)
AOC-E-304	Certificate of Probate
AOC-E-383	Estates Bill of Costs
AOC-E-400	Oath / Affirmation
AOC-E-401	Bond (Side 1: Corporate Surety; Side 2: Personal Sureties)
AOC-E-402	Order Authorizing Issuance of Letters
AOC-E-403	Letters
AOC-E-404	Waiver of Personal Representative's Bond
AOC-E-500	Appointment of Resident Process Agent
AOC-E-901	Receipt and Agreement (restricted bank account for bond reduction)
AOC-E-907	Authorization to Release Funds

No AOC form exists for: administrator DBN CTA application, administrator DBN application, collector application, notice under G.S. 28A-6-2, order denying letters, first mortgage/deed of trust bond. For DBN/DBN CTA & Collector, modify AOC-E-201 or AOC-E-202.

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Chapter 28A Quick Reference — Today's Topics

ARTICLE	CITATION	SUBJECT
Art. 2	28A-2-1 to -9	Estate Proceedings; Clerk's Jurisdiction
Art. 4	28A-4-1 to -2	Priority; Eligibility; Disqualification
Art. 5	28A-5-1 to -2	Renunciation (Express & Implied)
Art. 6	28A-6-1 to -5	Application for & Issuance of Letters; Validity
Art. 7	28A-7-1	Oath of the Personal Representative
Art. 8	28A-8-1 to -5	Bonds — Requirement, Waiver, Amount, Modification
Art. 9	28A-9-1 to -6	Revocation of Letters
Art. 10	28A-10-1 to -2	Resignation of Personal Representative
Art. 11	28A-11-1 to -5	Collector — Appointment, Powers, Termination
Art. 12	28A-12-1 to -8	Public Administrator
Art. 25	28A-25-1 to -1.1	Collection by Affidavit (Small Estates)
Art. 26	28A-26-1 to -5	Ancillary Administration
Ch. 31A	31A-3 et seq.	Acts Barring Property Rights (Slayer)

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Questions?

Thank you for your work in the clerk's office!

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Next Up: Creditor Claims — Mark J. Hale, Jr. & Catherine Wilson